

## EXHIBIT “K”



**PERCY JOBS AND CAREERS CORPORATION**

**AN IRC 501(C)(3) NON-PROFIT**

AT MARITIME COLLEGE STATE UNIVERSITY OF NEW YORK  
PO BOX 351  
6 PENNYFIELD AVE  
BRONX, NY 10465  
TELEPHONE (800) 358-3513  
FAX (888) 884-2193  
WWW.PERCY.ORG

September 11, 2020

NYC School Construction Auth-Bidding and PreQualif  
3030 Thomson Ave, 1st Floor  
Long Island City, NY 11101-3045

LEGAL DEPT.  
20 SEP 22 AM 10:06

Re: PS 166 (Masonry Repairs)

Dear Sir/Ma'am:

I am writing you as the class representative for "black or Spanish-surnamed persons who are capable of performing, or capable of learning to perform work"[<sup>1</sup>] in skilled occupations (herein the "Percy Class"). Enclosed is a copy of the Notice of Settlement of the Percy v. Brennan Action.

We can provide your requirements for affirmative action by providing members of the Percy Class to work for you in paid on-the-job apprentice training with related classroom instruction sponsored by us. By adopting the alternative employment practice of the Percy Program, enforced by 42 U.S.C. 2000 e-2 of the Civil Rights Act, Percy Jobs and Careers Corporation, an IRC 501(C)(3) non-profit, will address your need for affirmative action for the significantly disadvantaged Percy Class, the class wanting to compete for jobs and careers based on skills, not skin color or ethnicity.

We estimate that the above referenced project facility has 6 apprenticeable positions.

We are confident you will be persuaded the Percy Program will save you more than enough to pay for itself, at no additional cost to required workers' compensation coverage. This alternative employment practice provides paid on-the-job apprentice training as safety loss control management of workers' compensation coverage. Statistics demonstrate not only enhanced safety, reduced losses and savings on workers' compensation premium, but also enforces the Settlement of the Percy Class Action. The Percy Program and the Percy Class Action is at [www.percy.org](http://www.percy.org) and <http://percylalternativeemploymentpractice.com/percy-program/63514624>

For us to price the Percy Program for you, please contact us through class counsel for the Percy Class, Jim Kernan, by email at [jkernan@kernanllp.com](mailto:jkernan@kernanllp.com) or telephone at 212-697-9084 for demonstration of the Percy Program.

Kind regards,

  
Albert Percy

[<sup>1</sup>] The Class certified in Percy v. Brennan, Federal District Court SDNY Case 73-cv-04279, reported at 384 F. Supp 800, at Page 808, docketed in US 2nd Circuit Court of Appeals appeal No. 17-2274 Docket #97 page 0003 and Docket #99 page 640.



Accredited Training Sponsor

demonstrating that on-the-job apprentice training with related classroom instruction is a less discriminatory alternative employment practice<sup>4</sup>. Failures to adopt the alternative employment practice are unlawful employment practices under the 42 U.S.C. §2000e-2 of the Civil Rights Act.

Additionally, when an employer is receiving federal funding, such an employer must comply with conditions set forth in Presidential Executive Order 11246 and regulations requiring affirmative action for equal employment opportunity as ruled in *Percy v. Brennan*. The Percy Class members are beneficiaries identified in federal funding.

The alternative employment practice of paid on-the-job apprentice training with related classroom instruction, enforced by 42 U.S.C. 2000 e-2 of the Civil Rights Act, addresses the need for affirmative action to foster equal employment opportunity for the significantly disadvantaged Percy Class, the class wanting to compete for jobs and careers based on skills, not offensive, arbitrary, and segregating classifications.

Despite the favorable ruling and Settlement of *Percy v. Brennan*, the apprenticeship never materialized and the alternative employment practice has been thwarted. Today the United States of America faces shortages of skilled labor and the Percy Class experiences unacceptable income disparity, few fringe benefits, and the lack of a career ladder, all contributing to chronic workforce shortage and severe income inequality.

Members of the Percy Class may be entitled to lost wages, lost opportunity, relief enforcing the demonstrated alternative employment practice, and damages for failure of the Settlement in the landmark case of *Percy v. Brennan*, among other causes of action.

If you would like additional information or have questions, you can contact James M. Kernan, the attorney retained by Class Representative Albert E. Percy on behalf of the Percy Class, at 212-697-9084 or by email at [jkernan@kernanllp.com](mailto:jkernan@kernanllp.com).

Dated: July 1, 2020

  
James M. Kernan

KERNAN PROFESSIONAL GROUP, LLP

26 Broadway, 19th Floor,  
New York, New York 10004

Phone: (212) 697-9084

Fax (212) 656-1213

[jkernan@kernanllp.com](mailto:jkernan@kernanllp.com)

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PROGRAM Paragraphs 275 – 276, XVIII. REGULATORY APPROVALS OF PERCY PROGRAM Paragraphs 277 – 280)

<sup>4</sup>in accordance with 42 U.S.C. §2000c-2(k)(1)(A)(ii) and §2000e-2(k)(1)(C) of the Civil Rights Act, and Definitions at 42 U.S.C. §2000e

**THIS IS A NOTICE REGARDING A SETTLEMENT OF A CLASS ACTION LAWSUIT**  
**THIS IS A NOTICE OF YOUR RIGHTS, NOT AN ACTION AGAINST YOU**

This Notice, authorized by Federal Rules of Civil Procedure §23 - Class Actions, is not a solicitation from a lawyer. This Notice explains your rights and options to participate regarding a class action Settlement and other causes of action being prosecuted on behalf of the class identified in this Notice.

**NOTICE of SETTLEMENT**

If you are “black or Spanish-surnamed persons who are capable of performing, or capable of learning to perform, construction work”<sup>[1]</sup> and other skilled occupations (herein the “Percy Class”), and you are, or were in the past, ready, willing and able to work, learn and earn, you are undoubtedly a member of the Percy Class whose rights have been preserved by this Settlement, entitling you to compensation and relief as a member of the Percy Class for lost wages, lost opportunity, and relief enforcing a demonstrated alternative employment practice. The proposed enforcement class action under investigation (“Percy Class Action”) and pertinent research materials gathered, are available for review at website:

**[Percy.alternativeemploymentpractice.com](http://Percy.alternativeemploymentpractice.com)**

**OPT-IN**

For you to be eligible to be a Member of the Percy Class, you must opt-in to the Percy Class by going to the [www.Percy.org](http://www.Percy.org) website and filling out the application form at:

**<http://percy.org/apprenticeship-training-form/>**

If you choose to participate in this Percy Class Action, this Notice advises you that you must affirmatively elect to opt-in by filling out the above referenced form.

**BACKGROUND OF THE LITIGATION**

In 1974 in the landmark Percy v. Brennan Class Action, ( “Case 73-cv-04279” or “Percy v. Brennan”), Albert E. Percy won the right for unskilled workers to receive paid on-the-job apprentices training so they could benefit from good jobs while enjoying the pride, freedom and liberty to be able to compete for jobs and careers based on skills, not because of segregating criteria of skin color or ethnicity perpetuating unequal treatment, denying equal protection of the laws.

Being challenged on behalf of the Percy Class is inappropriate offensive and arbitrary rationing of jobs. The Percy Class seeks affirmative action in apprenticeship and employment to be able to compete based on skills, by enforcing the Order in United

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<sup>[1]</sup> The Class certified in Percy v. Brennan, Federal District Court SDNY Case 73-cv-04279, reported at 384 F. Supp 800, at Page 808, docketed in US 2nd Circuit Court of Appeals appeal No. 17-2274 Docket #97 page 0003 and Docket #99 page 640,



States District Court for the Southern District of New York Case of Percy v. Brennan Case 73-cv-04279 reported at 384 F Supp 800, by Judge Lasker of November 8, 1974 in favor of the Percy Class, and settlement and closing of Percy v. Brennan action by Judge Edelstein's Order of May 4, 1977 (the "Settlement").

This action is based on the record in US SDNY Case 73-cv-04279, which case file was thankfully archived in St. Louis, Missouri as potentially of national significance, the case file returned from St. Louis to the National archives in New York City upon the request on behalf of Class Representative Albert E. Percy, to and certified by the National Archives to the United States District Court for the Southern District of New York. The record was then filed by ECF in Appeal No. 17-2274 as the Docket on Appeal to the United States Second Circuit Court of Appeals.

This action is grounded upon the final and enforceable Memorandum/Order of Judge Lasker reported at 384 F Supp 800 of November 8, 1974, and the Settlement agreement accepting Defendant New York State's offer of Executive Order 45 (Governor Carey's EO 45 (9 NYCRR 3.45) in settlement to resolve the issues raised in the Case 73-cv-04279. Thereupon, Percy v. Brennan Case 73-cv-04279 was closed without prejudice by Judge Edelstein's Order of May 4, 1977.

Then the New York Court of Appeals in *Fullilove v Carey* (48 NY2d 826, 1979), decided together with *Fullilove v Beame* (48 NY2d 376, 1979), declared that EO 45 as promulgated by Governor Carey was an unauthorized exercise of legislative power, illegal and unconstitutional. Implementation of the provisions of said EO 45 was enjoined, including promulgation or enforcement of any rules and regulations issued pursuant to said EO 45.

The Settlement failure caused by the State of New York's actions or failure to act, are actionable, and were compounded by The State of New York's misrepresentation in failing to notify the Court and the Percy Class of the failure of the Settlement. New York State then actively continued to interfere with a private solution alternative employment practice demonstrated to be a less discriminatory employment practice. The State of New York caused and continues to cause injury and damage to the Percy Class.

The demonstrated less discriminatory alternative employment practice, is paid on-the-job apprentice training with related classroom instruction provided as a component of loss control and safety management within workers' compensation coverage, coverage required by all employers. The alternative employment practice<sup>2</sup> is the Percy Program<sup>3</sup>,

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<sup>2</sup> proposed Percy Class Action XI. ALTERNATIVE EMPLOYMENT PRACTICE Paragraphs 53 – 181)

<sup>3</sup> proposed Percy Class Action XVI. THE PERCY PROGRAM Paragraphs 241 – 274, XVII. COMPONENTS OF PERCY

# Alternative Employment Practice

GO TO

<http://percy.alternativeemploymentpractice.com/percy-program/63514624>



## JOBS TO CAREERS PROGRAM

by

**Percy Jobs and Careers Corporation**

**an IRS 501(c)(3) not-for-profit corporation**

**allowing donors to deduct contributions they make  
as provided in IRC Section 170, and receive tax  
deductible bequests, legacies, devises, transfers, or  
gifts under IRC Sections 2055, 2106, and 2522**

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*Attorney's for Plaintiff, Albert E. Percy as Class Representative*

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26 Broadway, 19th Floor  
New York, New York 10004  
Telephone: (212) 697-9084  
Fax: (212) 656-1213

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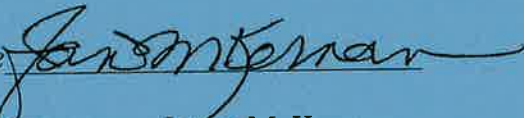
*Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not, frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other person responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involved potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR.1200. 41.a.*

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*Dated: July 6, 2020*

*Signature*



*Print Signer's Name. James M. Kernan*